

Church and State
in Germany

Schraden, F. F.

The Concordat of 1933

Between

The Holy See

and

The German State

Church and State in Germany

By

FREDERICK FRANKLIN SCHRADER

PATRIOTIC Germans take great satisfaction in the recent improvement of relations between the Church and State in the Fatherland.

The unification of the Protestant creeds including 28 sects by acceptance of a common constitution and administration for the new German Central Protestant Church and the conclusion of a concordat with the Church of Rome at length has brought religious peace to Germany after centuries of disunion and strife. The dividing line between the functions of the Church and the State at last has been clearly drawn to the satisfaction of both.

What Bismarck failed to accomplish in eight years of cultural struggle (*Kulturkampf*) Hitler won for his people in six months of negotiations.

The new Lutheran Church is no longer a State Church in northern Germany, neither is the Catholic Church still a State Church in Bavaria, Baden and the Rhineland. The State now exercises no sovereignty whatever over the churches and their creeds, the sole authority for which are the gospels.

Toward the State the Protestant people of Germany are represented by a National Synod, which is purely an advisory body. A Lutheran Bishop, appointed by the State, is at the head of the new German Protestant Church. In his administration he is assisted by four councillors. Their council consists of one lay lawyer and three clergymen representing the three main groups of the Protestant Church, to wit—Lutheran, Reformed and Uniate.

By the terms of the charter for the new Central Protestant Church, which was adopted on July 12th of this year, all the churches in Germany regained complete internal freedom and independence. On the other hand, all Protestant ministers of religion in Germany now are debarred from political activities in the same way as are the Catholic priests.

This latter point was reaffirmed in the concordat, recently ratified between the Holy See and the German State. There had been no difficulty

about it, for the Church of Rome prefers to hold itself aloof from current politics. The wise policy of the Vatican in modern times has been rather to look to the future, leaving current political problems to the secular powers.

The ratification of the treaty between the Vatican and the Reich on Sept. 10th, as initialed on July 8th by its negotiators, Cardinal Secretary PACELLI and Vice Chancellor VON PAPEN, after approval by Archbishop GROEBER of Freiburg, (representing all the German bishops who had studied the draft agreement during a meeting in Fulda at Whitsuntide) was received with joy in Germany.

Von Papen's Interpretation

In the words telegraphed by VON PAPEN to President VON HINDENBURG on the conclusion of the negotiations in Rome both Church and State are justified in expecting that the acceptance of the agreement will bring internal peace to the German people by means of the regulation of the respective spheres of action of Church and State, and by the increased spiritualisation of the Church.

Confirming this view, the venerable *Postzeitung* of Augsburg (established in 1686) said that "no document will command such widespread attention as the text of the Reichs-concordat, the origin and object of which Vice Chancellor VON PAPEN interpreted in response to an invitation of the Catholic Academic Union at Maria Laach before a crowded executive meeting of representatives from all parts of Germany. It proved an historic event, never to be forgotten by those present. As a loyal friend of the Union, Colonel VON PAPEN expounded the object and the incidents of his visit to Rome, which peaceful mission assumes the magnitude of a work of world-wide historic significance.

"During General SCHLEICHER's chancellorship VON PAPEN had regretfully contemplated the effect of party domination in preventing the dawn of a new era, and it awakened in him the determination to invest the Church with what was needful to enable it to fulfill its divine mission, but at the same time to make the separation of Church and Politics as emphatic as possible. He found Chancellor HITLER in hearty accord with him, so that when a complete understanding had been reached, Easter was agreed upon as the time for initiating negotiations with Rome. The discussion was difficult and long drawn out, but Herr HITLER showed a keen sense of the necessity that the negotiations should not take on the character of 'barter

and sale' for gains of greater or minor value, but should insure a distinct recognition of the new liberal era, the abandonment of any ideas associated with a *Kulturkampf*, and the closest coöperation of the spiritual high powers toward the development of a new German future."

In explaining the contents of the concordat, VON PAPEN regaled his audience with an elucidation of various background details of the far-reaching historic achievement, serving as the first step toward a satisfactory solution of an old controversy—as, for instance, the reaction of the Holy Father to the treaty. The Pope was not unaware of the many serious doubts that had to be resolved, but also not insensible of the great service Italy, and now Germany, had rendered Christianity by destroying Bolchevism and the atheistic movement, so that he felt duty-bound to do all that was possible to aid these efforts. "For that reason," he said, "I shall conclude this concordat with the young Germany of Chancellor HITLER."

VON PAPEN in return assured him that Germany would not disappoint him, but rather that this historic act marked the spiritual solution of a civil conflict which defined the mutual relationship of Church and State and made the Christian motive the foundation of the new Germany. In the German cabinet discussions HITLER had constantly insisted on viewing the problem along broad lines in order to avert the danger of obscuring by petty fault-finding the guiding line which must be followed in the interest of internal as well as external policy.

"In reaching this agreement," VON PAPEN concluded, "we have assumed a great responsibility and are pledged to coöperate in the constructive work before us without mental reservation. German Catholicism has an important historic mission. We have not lived up to it. Perhaps we were prevented by an inferiority complex. The Academic Union under the leadership of my friend, the Prelate DR. MUENCH, has always been of that opinion, and has called for the exercise of Catholic principles within the political sphere. We can now apply ourselves to the task under full sail, and by exercising our privilege we shall play the rôle that belongs to us and without which Germany cannot be rebuilt!"

After sending a congratulatory telegram to the Chancellor, the Academic Union followed it with a similar message to the Pope:

Our session in the Benedictine Abbey Maria Laach finds itself completely under the spell of the new Reichs Concordat through the explanation of

Vice Chancellor von Papen. With loyal devotion the Catholic Academic Union thanks your Holiness for this renewed proof of your wisdom and paternal love for the German people. We confidently anticipate a great new period of religious life for the Catholic Church in Germany.

German Newspaper Comment

Editorially the *Postzeitung*, after according HITLER and VON PAPEN full credit for their successful efforts, remarked: "The fact that the Curia actively coöperated and showed its willingness to conclude a treaty of such magnitude with Germany, is of vast importance to the Germany of today—namely, that the wave of Germanophobia, fed by irresponsible propaganda and hate-inspired lies, was not able to disturb the calm judgment of the Vatican. It shows that the Holy See is high above the petty, short-sighted currents of the present and has preserved its power of appraisal for what is true, enduring and progressive. Rome did not ignore the line by which periodic history reaches its goal. On the contrary, the fact that the Vatican deemed it important to come to so expeditious an agreement with the new Germany proves its confidence in the endurance and moral justification of the new German State form."

The Catholic *Germania* concluded its review of the concordat in these words: "It was reserved for the constellation of ADOLF HITLER, FRANZ VON PAPEN and Cardinal PACELLI to renew the old bonds between the Reich and the Church."

It is in fact the first time in a century that the Reich and the Holy See have entered into contract. An approach to that end was made at the beginning of the last century but failed. No provision for a concordat was included in the constitution of 1871. The settlement of ecclesiastic affairs was left to the individual States. The foundation of a concordat was laid, however, in the Weimar constitution of 1918, and on the German side the draft for such accord was prepared during 1921-22. But party divisions in parliament afforded no encouragement for its adoption. Accordingly Bavaria concluded a concordat with the Papal See in 1924, Prussia in 1929 and Baden in 1932. In the remainder of the German States the relations were not clear, so that the Church had a strong interest in a general concordat, embracing all the component units of the country and enlarging the scope of the individual agreements.

Important Points

Space is too limited here for a detailed discussion of the whole treaty with its appendix of explanations, as abridged in this pamphlet. The importance of the concordat is to be sought in the right, which is accorded by the State to the Church to exercise publicly its own affairs within the general laws, as well as to adopt binding ordinances for its members. The Church may fill all clerical offices, but the higher dignitaries must be acceptable to the head of the secular government and the bishops must attest their patriotic loyalty to the authorities by oath. The inculcation of patriotism and the cultivation of a sense of civil and social duties in all institutions of learning is stressed. Priests will be expected to confine themselves to their spiritual duties, but the Church lays special stress on its right to impart religious instructions and education to the younger generation and to foster the attachment of the older. Societies for religious-cultural promotion are permitted and may exercise their functions unrestrainedly within definite limits. Other societies and associations will be included in a scheme of general organization and required to abstain from political and trades union activities.

The Catholics are satisfied that the State concordat assures State protection for the Church and important Church activities, such as the freedom of relations between the Apostolic See and the German Episcopacy, or between bishops and their subordinates, the activity of religious orders and unions, the upkeep of Catholic-theological faculties in State universities, episcopal institutions for the instruction and education of theological recruits, and especially the protection assured to religious services and the cure of souls in public institutes, to the members of Catholic societies, and to national minorities. The cure of souls for the Reichswehr has been entirely reorganized and placed in the hands of a special army bishop, who also appoints army chaplains. In the case of urgent moral need it is possible under certain conditions to celebrate a marriage in Church, prior to the civil marriage. Establishment of Church schools; religious instruction in all schools including trade schools; appointment of suitable teachers in Church schools; training of Catholic teachers in proper institutes.

Reasons for Satisfaction

The Reich has every reason to be satisfied with the concordat as it safeguards national interests in a greater degree than hitherto, for instance: education by means of religious instruction in patriotic and

social duty; German citizenship for most priests; coöperation of the Government in diocesan changes; subordination of the settlements of German religious orders under German provincial Superiors; church prayers for the welfare of State and people; oath of allegiance for bishops.

The foregoing shows that both Church and State have made mutual concessions in order to arrive at an agreement satisfactory to both parties. The State concordat also proves the significant fact that Hitler's Government is endeavouring to elevate the German people by arousing religious feeling, by giving a religious foundation to the whole State system, and by utilizing religion for the good of the people and for the State Idea. Not the separation of Church and State, but rather the complete coöperation of both powers, as well as mutual assistance and support, are assured by the State concordat.

The Hitler organ, *Völkischer Beobachter*, writes: "By signing the Reichs concordat, German National Socialism is acknowledged by the Catholic Church in the most solemn manner. The long drive against the alleged atheistic tendencies of our Party is now silenced by Church authority. This represents an enormous strengthening of the National Socialist Government. The deplorable, catastrophic religious conflicts that kept Germany in serious turmoil for centuries have ended with the signing of the Concordat of 1933."

Vice Chancellor FRANZ VON PAPEN was among the pilgrims to the Cathedral of Trier, where the holy vestments of the Savior were exhibited late in July in the presence of 25,000 other pilgrims from all parts of the country. Colonel VON PAPEN officially represented President VON HINDENBURG and Chancellor HITLER at Trier.

On August 15th at Freiburg, Archbishop DR. GROEBER held a solemn pontifical mass—*Te Deum Laudamus*—in celebration of the conclusion of the concordat. In the presence of more than 10,000 worshippers the Archbishop praised Chancellor HITLER for having given the Church in Germany justice and peace. For this statesmanly achievement, he declared, the Chancellor deserved the hearty thanks of all German Catholics.

The Concordat of the Holy See With Germany

THE concordat between the Holy See and the German State, herewith reproduced, is translated from the official Italian and German text of the treaty, as published in the *Osservatore Romano* and in the German *Reichsgesetzblatt*. According to Vatican usage the authorized Latin text of the treaty is expected to appear in the *Acta Sedis Apostolicae*. Ratifications of the agreement were exchanged at the Vatican on September 10th, 1933.

The Treaty

His Holiness Pope PIUS XI. and the President of the German State, inspired by the wish to strengthen and to further the now existing friendly relations between the Holy See and the German State, and earnestly desirous to make arrangements for an enduring intercourse between the Catholic Church and the whole of the German State, which may satisfy both contracting parties, have *resolved*:

In a most solemn way to come to a mutual understanding about the concordats concluded with different German States and to supplement them wherever necessary; also to assure for all the other States of the Reich a uniform application of principles in the treatment of all conducive questions. To this end His Holiness, Pope PIUS XI. has nominated as His plenipotentiary His Eminence, the most Reverend Cardinal EUGENIO PACELLI, His Secretary of State, and on the other hand, the President of the German State has appointed as plenipotentiary MR. FRANZ VON PAPEN, Vice Chancellor of the German State. After having exchanged their respective credentials and having found them to be in good order they agreed to the following articles:

ARTICLE 1: The German State guarantees the liberty of creed and of public exercise of the Catholic religion. It recognizes the right of the Catholic Church, within the limits of law binding for all inhabitants, independently to regulate and administer its proper affairs and to issue

within the bounds of its competence binding rules and regulations for its members.

ARTICLE 2: The concordats concluded with Bavaria (1924), Prussia (1929) and Baden (1932) remain in force as heretofore within the territories of said States and so do all rights and liberties recognized in them and conceded to the Catholic Church. The agreements of this concordat become valid in their totality for all the other German States. These agreements are valid also for the three above named States, if they have not been considered in their respective concordats, or in case they supplement former agreements. For the future the conclusion of concordats for any single German land can be resolved only in consonance with the Government of the German State.

ARTICLE 3: To maintain the good relations between the Holy See and the German State as heretofore an Apostolic Nuncio will reside in the capital of the German State and a German ambassador will reside near the Holy See.

ARTICLE 4: The Holy See in its transactions and correspondence with the bishops, the clergy and other members of the Catholic Church in Germany enjoys complete freedom. The same is true for the bishops and other authorities of dioceses in their relations with the faithful in all pastoral matters. Instructions, regulations, pastoral letters, official diocesan papers and other ordinances for the spiritual guidance of the faithful, which are issued by the church authorities within the limits of their competence, may be published without restrictions and in accordance with established usages may be brought to the knowledge of the faithful.

ARTICLE 5: In the exercise of their spiritual activity the clergymen in like manner as the government officials enjoy the protection of the State. The latter will take action against offenses to their persons or to their character als clergymen as well as against disturbances of their official functions in accordance with the general law of the State, which will give protection when needed.

ARTICLE 6: Clergymen and members of religious orders are free from obligations with respect to official duties and incumbencies, the performance of which would be contrary to the canonical law or to the obligations of holy orders. This applies particularly to requisition of services as jurymen, judges' assessors, tax commissioners or financial arbiters.

ARTICLE 7: To accept employment or a public office in the State or in a judicial corporation dependent upon the State clergymen must have the approval *Nihil Obstat* of their diocesan overseer as well as of the government authority. The *Nihil Obstat* is revocable at any time, if important reasons of the Church demand such revocation.

ARTICLE 8: The official income of clergymen is immune from attachment or execution in like manner as are the incomes of government officials.

ARTICLE 9: Clergymen can not be compelled by courts of law and other governmental authorities to reveal information concerning things confided to them in the exercise of their pastoral office, thereby falling under the secret of the confessional.

ARTICLE 10: Any abuse of wearing clerical vestments or habiliments of holy orders contrary to the regulations of the clerical or governmental authorities will be punished in the same way as misuse of military uniforms.

ARTICLE 11: The present diocesan organization and circumscription of the Catholic Church in Germany remains as it is. Concerning an eventual new establishment of a bishopric or a province of the Church or concerning other changes in diocesan circumscriptions within German lands there must be consultation with the government of the particular State, or, if necessary, with the government of the Reich. The same is true of new establishments or transformations of church provinces coming under the jurisdiction of several German states. This does not apply to changes in diocesan boundaries which may be made solely in the interest of local pastoral requirement. In case of eventual transformations within the German realm, the government of the Reich will confer with the Holy See concerning necessary diocesan reorganizations.

ARTICLE 12: Notwithstanding the clauses of Article 11, official posts of the Church may freely be established or changed, if public funds of the State are not involved. Governmental coöperation in the formation or transformation of parishes will be given according to principles agreed to by the diocesan bishops.

ARTICLE 13: The Catholic communities, parishes, dioceses, episcopal sees, bishoprics, canonical chapters, holy orders and religious associations, as well as those institutions, charitable endowments and pieces of church property, which have been placed under the administration of church authorities, retain or acquire judicial personality in the State in accordance

with the law of the land. They remain corporations as hitherto. Those that may be formed anew come within the same legal provisions that govern all.

ARTICLE 14: The Church has the free right of appointing persons for all offices and benefices of the Church without coöperation of the State, if the previous concordats named in Article 2 do not contain agreements to the contrary. With reference to the appointments for episcopal sees, the regulations given for the metropolitan see in Freiburg will be applied in a pertinent way for the suffragan-episcopates Rothenburg and Mainz and also for the episcopate Meissen. Furthermore agreements about the following points have been arrived at:

Firstly, Catholic priests in Germany must be German citizens, must have a German certificate of educational maturity entitling them to enter a German university, must have passed examination in the papal university at Rome or in a German university after a three years' course of philosophical-theological study.

Secondly, the appointments for archbishops, bishops and the like will be issued only after the governor, installed by the Reich, has duly ascertained that no doubts exist with respect to general political considerations.

ARTICLE 15: Holy orders and religious associations are not to suffer interference from the State in regard to their foundations, settlements, number, functions of their members, parished, educational, charitable or nursing activities, nor in the disposition of their affairs and the administration of their property. Heads of holy orders, who have their official residence within the German realm, must be German citizens. Heads of holy orders, who reside outside the German realm, have the right to visit those of their settlements that lie within Germany, even though they may not be German citizens. The Holy See will see to it that the settlements of holy orders within the German realm may not be governed by foreigners, whenever this is feasible. Exceptions to this can be made in agreement with the German government, especially in such cases where the settlements are very small or where there are special historical reasons for retaining a long established organization.

ARTICLE 16: Bishops before taking up their diocesan duties will swear into the hand of the governor or into that of the President of

the Reich the following oath of allegiance: "Before God and the Holy Gospel I swear and promise allegiance to the German Reich and to the land of , as becomes a bishop. I swear and promise to hold the constitutional government in esteem and to prevail upon my clergy to do the same. I recognize it as my duty to work in the exercise of my office for the public weal and the interests of the German State and ever to strive to ward off any harm that may threaten it."

ARTICLE 17: The property and property rights of Catholic Church corporations, institutions and endowments are guaranteed in accordance with the law of the land. For scarcely any reason may a building for divine worship be torn down, unless there be previous consent of the respective church authorities.

ARTICLE 18: Any change in treaty obligations of the State to the Catholic Church shall be made only after previous agreement between the Holy See and the German State.

ARTICLE 19: The Catholic faculties of divinity in the German State universities will be maintained. Their relations to the Church authorities are governed by respective clauses in the previous concordats. The German Government will see to it that uniform lay practises will be secured to all Catholic faculties of divinity in Germany.

ARTICLE 20: The Church has the right, provided there exist no other agreements, to establish colleges for the instruction of the clergy, which will depend solely upon the Church authorities, provided no allowances or subventions from the State are required. The establishment, maintenance and administration of seminaries for priests remains wholly with the Church authorities within the limits of the general law.

ARTICLE 21: Instruction in Catholic religion at elementary, middle and higher schools is obligatory for Catholic pupils and will be given in accordance with the principles of the Church. Emphatically religion must be taught in the spirit of Christian doctrine and moral law so as to develop a patriotic, civic and social sense of duty, as is the practice in the other branches of instruction. The subject matter and text books for religious instruction will be selected in agreement with the Church authorities. To these authorities opportunities will be given by the school boards to ascertain whether pupils receive their religious instruction in accordance with the demands of the Church.

ARTICLE 22: When Catholic teachers are to be employed for teaching religion, an understanding between the bishop and the State government must precede. Teachers, who because of their doctrine or moral conduct have been declared by the bishop as unfit shall not continue to be employed as teachers of religion so long as that obstacle remains.

ARTICLE 23: Schools of Catholic faith are guaranteed their continuance and new schools of the same kind may be established. In all communities where parents demand it, Catholic public schools will be opened whenever the number of pupils warrant it.

ARTICLE 24: In all Catholic elementary schools only teachers belonging to the Church and approved by the Catholic Church are to be employed.

ARTICLE 25: Holy orders and religious congregations are entitled within the provisions of the general laws of the land to establish and carry on private schools. Such schools, in so far as they follow the curricula of the State schools, are to be accredited like them to the universities. For the employment of members of holy orders or of religious associations as teachers in elementary, middle and higher schools the same conditions apply as to other State teachers.

ARTICLE 26: While reserving rights for later and more extensive regulation of legal matrimonial questions it is agreed that a church wedding in exceptional cases may precede the civil marriage. Such exceptions may be warranted by a serious illness of one of the betrothed precluding delay or a by a grave moral predicament, the existence of which must be attested by the episcopal authorities. The priest performing the marriage service in such cases must immediately notify the civil authorities.

ARTICLE 27: To the Catholic officers and men of the German army, as well as to their families, a particular religious exemption is accorded. The administration of the military ministerial office is incumbent on the army bishop. His clerical nomination is made by the Holy See after agreement with the Government of the Reich. Nominations of military chaplains will be made by the army bishop in agreement with the respective officer of the Reich. The army bishop can nominate only such clergymen as have received permission from their diocesan bishop to become military chaplains. The chaplains in regard to the troops assigned to them

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have the same rights as curates in regard to their parishioners. Further regulations about the clerical organization of chaplains are to be issued by the Holy See. Military regulations governing chaplains are issued by the German government.

ARTICLE 28: In hospitals, penitentiaries and institutions of public charity the Church is admitted for ministerial office and divine service in conformity with the house rules. In case of regular employment of such ministers, this must be done in agreement with the Church authorities.

ARTICLE 29: Catholic members of non-German minorities, living within the confines of Germany, will be allowed the use of their native tongue in divine worship, parochial schools and churchly associations in the same manner, legally and actually, as are the Germans living within the respective foreign countries from which those non-German minorities derive.

ARTICLE 30: On Sundays and church holidays in all Catholic churches of Germany a prayer for the welfare of the German State and people will be recited in connection with the main service according to the liturgy.

ARTICLE 31: Catholic organizations and associations, dedicated solely to religious, cultural and charitable aims, and as such dependent upon the Church, are to be protected in their organization and activity. Those dedicated also to kindred aims, social or professional, or pertaining in part to some organization of the State, shall enjoy the same protection, providing always that they pursue their aims outside of any political party. The German episcopate together with the government of the Reich will decide which organizations and associations belong to this category. When the Reich or State take direct concern in activities of sport or youth organizations care will be taken that their members can attend divine service on Sundays and holidays and that they are not obliged to do things which are not in line with their religious convictions and duties.

ARTICLE 32: In view of the special circumstances prevailing in Germany and of the guarantees created by the present concordat to insure right and liberty for the Catholic Church, the Holy See will issue regulations, by which neither priests nor members of holy orders may belong to political parties, nor will they be allowed to deploy activities in favor of such parties.

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Supplementary Protocol

To the text of the concordat, as concluded on July 20th, 1933, is attached a final protocol forming part of the concordat itself and supplementing some of its articles. It is agreed that those matters of ecclesiastical competence, which are not specially mentioned in the above articles, will be treated in accordance with canonical law. Differences of opinion that may arise will be settled by mutual and friendly agreements between the Reich and the Holy See.

According to the protocol the Apostolic Nuncio in Berlin remains *Doyen* of the diplomatic corps, as conceded in a previous agreement of 1930. The right of the Church to levy church taxes remains in force. If in the course of twenty days no objections to ecclesiastic candidates because of their political behavior shall have been presented by the German government, the Holy See presumes that no such objections exist. Discretion is to be observed about the persons under consideration prior to their nomination. Thereafter the State shall have no right of veto.

In regard to Article 19 concerning Catholic faculties of divinity the basis for the agreement reached lies in the Apostolic Constitution "*Deus scientiarum dominus*" of May 24, 1931 and in the Papal Instruction of July 7, 1932.

In Article 26 the expression "grave moral predicament" is understood to mean the distress occasioned by prohibitively expensive or unsurmountable difficulties about submitting the certified documents required by the civil authorities before performing a marriage ceremony.

In regard to national minorities the Holy See promises to provide for similar protective arrangements for German minorities in other countries in its future concordats with those countries.

In Article 32 it is understood that prohibition of partisan political activities for clergymen in Germany also extends to non-Catholic German clergymen. The corresponding orders of interdiction by the Holy See are not intended to curb the promulgation and explanation of dogmatic and moral teachings and principles of the Church, which is the duty of its ministers.

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